

THOMAS C. LUMPKIN  
WILLIAM C. CHAW  
RONALD A. KRIST  
THOMAS D. LUMPKIN  
JILL NEXON  
RODERICK N. PETREY  
ROBERT S. TURK  
RAUL E. VALDES-FAULI  
RAUL J. VALDES-FAULI  
CLEMENTE L. VAZQUEZ-BELLO

OF COUNSEL  
THOMAS D. LUMPKIN

**VALDES-FAULI, COBB & PETREY**

PROFESSIONAL ASSOCIATION  
ATTORNEYS AND COUNSELLORS  
SUITE 3400-ONE BISCAYNE TOWER  
2 SOUTH BISCAYNE BOULEVARD  
MIAMI, FLORIDA 33131-1803  
(305) 376-6000  
TELEX 6811169 VALFA  
TELECOPIER (305) 376-6010  
ZAPMAILER (305) 374-4797

DIRECT DIAL 376-6064

4/B  
ALCIDES I. AVILA  
JANIS K. CHEEZEM  
LINDA EBIN  
JOHN H. FRIEDHOFF  
JEREMY J. HART  
OLGA RAMIREZ-SEIJAS  
WILFREDO A. RODRIGUEZ  
JOAN T. RUSSELL  
OSCAR A. SANCHEZ  
JAMES D. SILVER  
JOSE E. SIRVEN  
LEON J. WOLFE

VIA FEDERAL EXPRESS

March 4, 1986

Martin H. Marks, Esquire  
Trademark Attorney  
Law Office Number 6  
Commissioner of Patents and Trademark  
Box 5  
Washington, D.C. 20231

RECEIVED  
MAR 6 12 47 PM '86  
T.M.E.O.  
LAW OFFICE VI


Re: Banco del Pacifico; Serial Number 73/489879

Dear Mr. Marks:

Enclosed is a "Response and Amendment" to your Office Action dated September 10, 1985 regarding Banco del Pacifico's application, serial number 73/489879. We have also enclosed a copy of the Office Action for your convenience.

Thank you for your attention.

Sincerely,



Alcides I. Avila

AIA/lcb

Enclosures

Ecuabeverage Statement of Material Facts - Exhibit 5

RESPONSE AND AMENDMENT

TO: The Commissioner of Patents and Trademarks

MARK: TROPICAL; Serial No. 73/489879

MARK AS AMENDED: TROPICAL PURO SABOR NACIONAL

EXAMINING ATTORNEY'S NAME: Martin H. Marks; Law Office 6

MAILING DATE OF ACTION: September 10, 1985

APPLICANT: Banco Del Pacifico

APPLICANT'S ATTORNEY: Alcides I. Avila  
Valdes-Fauli, Cobb & Petrey, P.A.  
2 South Biscayne Boulevard  
Miami, Florida 33131-1803  
Phone Number: (305) 376-6000

In accordance with the Office Action dated September 10, 1985 Applicant hereby responds to such Office Action and amends its application as follows:

1. The undersigned is the President of the Applicant, BANCO DEL PACIFICO, and is authorized to execute this instrument on behalf of the Applicant;

2. The Examiner refused registration of the Applicant's mark because it so resembled the mark "Tropicool" as to be likely to cause confusion, or to cause mistake, or to deceive. After reviewing the Examiner's comments, the Applicant hereby amends the mark to read Tropical Puro Sabor Nacional (the "Amended Mark"), and in doing so, submits that the Amended Mark, with regard to "Tropicool," is no longer likely to cause mistake, confusion, or to deceive;

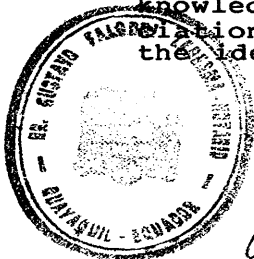
3. ~~The Applicant has adopted and is using the Amended Mark for soft drinks and flavored syrups used in the preparation of making soft drinks;~~

4. The Amended Mark was first used in connection with the described goods on or about April 19, 1966. The Amended Mark was first used in the United States commencing on or about April 19, 1966, and continues to be in use in such commerce;

5. The Applicant has been importing the described goods into the United States during the above mentioned dates and, to date, continues to import such goods. Through such importation, the described goods are required to pass the examination of the Federal Food and Drug Administration and United States Customs. Accordingly, it is respectfully submitted that both governmental agencies have determined by their own standards that the described goods have conformed with the labeling standards of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.; 37 C.F.R. Section 2.69; TMEP, Section 901);

6. The five (5) specimens originally filed with the application show the Amended Mark as actually used in connection with the sale of the described goods;

7. The undersigned believes Applicant to be the owner of the Amended Mark sought to be registered; to the best of his knowledge and belief no other person, firm, corporation, or association, has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as may be





likely, when applied to the goods or services of such other person, to cause confusion, or to cause mistake, or to deceive; the facts set forth in the application and in the Declaration are true and all statements made of his own knowledge are true and all statements made on information and belief are believed to be true.

BANCO DEL PACIFICO

By: Mauricio de Wind

SWORN TO AND SUBSCRIBED, before me this \_\_\_\_\_ day of February, 1986.

Notary Public,

My Commission Expires:

DOCTOR GUSTAVO FALCONI LEDESMA, Notario Quinto del Cantón Guayaquil, Doi fé: Que la firma que antecede del señor Mauricio de Wind Córdova, con cédula de ciudadanía número 07-00561632, es auténtica.-  
Guayaquil, veinticinco de Febrero de mil novecientos ochenta y seis.-



REPUBLIC OF ECUADOR )  
PROVINCE OF GUAYAS )  
CITY OF GUAYAQUIL ) SS  
CONSULATE GENERAL OF THE )  
UNITED STATES OF AMERICA )

I, the undersigned Consular Officer of United States of America at Guayaquil, Ecuador, duly commissioned and qualified, do hereby certify that

Dr. Gustavo Falconi Ledesma

whose true signature and official seal are, respectively subscribed and attested to the foregoing (omitted certificate)

(document), was on the 25th day of February  
1986 the date thereof, Notary

Public for the Province of Guayas.

duly commissioned and qualified, to whose official acts faith and credit are given. In witness whereof I have hereunto set my hand and the seal of the Consulate General of the United States of America at Guayaquil, Ecuador this

day of FEB 26 1986

(FOR THE CONTENTS OF THE DOCUMENT THE CONSULATE GENERAL ASSUMES NO RESPONSIBILITY)

-2-

Charles F. Keil  
CHARLES F. KEIL

CONSUL  
OF THE UNITED STATES OF AMERICA